

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY****Caption in Compliance with D.N.J. LBR
9004-1**

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Attorneys for Salesforce, Inc.

In re:

BED BATH & BEYOND INC., *et al.*,Debtors.¹

Chapter 11

Case No. 23-13359 (VFP)

(Jointly Administered)

**DECLARATION OF KEVIN RAMIREZ IN SUPPORT OF THE OBJECTION OF
SALESFORCE.COM, INC. TO THE PROPOSED ASSUMPTION OF CERTAIN
EXECUTORY CONTRACTS AND CURE COSTS, AND
AND RESERVATION OF RIGHTS**

¹ A complete list of the Debtors in these chapter 11 cases and each such Debtor's tax identification number may be obtained on the website of the Debtors' claims and noticing agent at <https://restructuring.ra.kroll.com/bbby>. The location of Debtor Bed Bath & Beyond Inc.'s principal place of business and the Debtors' service address in these chapter 11 cases are 650 Liberty Avenue, Union, New Jersey 07083.

I, Kevin Ramirez, declare as follows:

1. I am the AR Analyst-Write-offs for Salesforce, Inc. (f/k/a salesforce.com, inc.) ("**Salesforce**") and I am authorized to execute this Declaration on behalf of Salesforce and Tableau Software, Inc. ("**Tableau**"). If called to testify, I could and would competently testify to the facts set forth herein based on my personal knowledge of those facts, events, and transactions.²

2. Salesforce is a Delaware corporation, and, among other activities, it provides on-demand customer relationship management and software application services (collectively, the "**Salesforce Services**") to its business customers (individually, a "**Salesforce Customer**" and, collectively, "**Salesforce Customers**"). Tableau (which was acquired by Salesforce in 2019), among other activities, provides data analysis and other services (collectively, the "**Tableau Services**") to its business customers (individually, a "**Tableau Customer**" and, collectively, the "**Tableau Customers**"). Salesforce acts on behalf of Tableau with respect to the Tableau Transactions (as identified below) with the Tableau Customers, related Obligations (as identified below) and claims related to the Tableau Services and Tableau Customers that are subject to this declaration.

3. This declaration is filed in support of the *Objection of Salesforce, Inc. To the Proposed Assumption of Certain Executory Contracts and Cure Costs, and Reservation of Rights* (the "**Assumption And Assignment Objection**") filed by Salesforce and Tableau with respect to: (A) the possible assumption of the Salesforce Contract (as hereinafter identified) and assignment of such contract unless the relief sought by the Assumption And Assignment Objection is granted; (B) the possible assignment of the Tableau Contract (as hereinafter identified) unless the relief sought by the Assumption And Assignment Objection is granted; and (C) the reservation of rights asserted by Salesforce and Tableau as set forth in the Assumption And Assignment Objection.

² Capitalized terms used in this Declaration, but which are not defined herein, shall have the meanings ascribed to them in the Assumption And Assignment Objection filed by Salesforce concurrently herewith.

MAINTENANCE OF BUSINESS RECORDS

4. In my official capacity, I have personal knowledge of the method by which Salesforce maintains permanent records of its transactions (individually, a “**Salesforce Transaction**” and, collectively, the “**Salesforce Transactions**”) with the Salesforce Customers and, thereupon, I declare and state that Salesforce maintains permanent records of all Salesforce Transactions in a computerized accounting system. All amounts due and owing to Salesforce with respect to any Salesforce Transaction including, but not limited to, payments related to the Salesforce Services, taxes, interest owed with respect to any such services or agreement, fees, and other charges (individually, a “**Salesforce Customer Obligation**” and, collectively, the “**Salesforce Customer Obligations**”), are entered in this accounting system at, or near, the time such obligations are incurred. Likewise, all payments made by a Salesforce Customer with respect to any Salesforce Transaction and/or any Salesforce Customer Obligation, and all other credits and debits related to any Salesforce Customer Obligation or Salesforce Transaction, are entered in this accounting system at, or near, the time such payment is received and/or such credit or debit is made or incurred. Each such entry is made in the regular course of business by employees of Salesforce who process these payments, receipts, credits, and debits. If necessary, Salesforce can print hard copies of all entries.

5. I have personal knowledge of the manner by which Salesforce maintains records of its written contracts, statements of work, schedules and any other documents related to such contracts, and all amendments to any contract, statement of work, schedule, and/or any other document (individually, a “**Salesforce Agreement**” and, collectively, the “**Salesforce Agreements**”) with Salesforce Customers. As a regular part of its business, Salesforce maintains permanent records of the Salesforce Agreements and these records are compiled at the time, or near the time, that such agreements are received or processed.

6. In my official capacity, I have personal knowledge of the method by which Tableau maintains permanent records of its transactions (individually, a “**Tableau**

Transaction” and, collectively, the **“Tableau Transactions”**) with the Tableau Customers and, thereupon, I declare and state that Salesforce and Tableau maintain permanent records of all Tableau Transactions in a computerized accounting system. All amounts due and owing with respect to any Tableau Transaction including, but not limited to, payments related to the Tableau Services, taxes, interest owed with respect to any such services or agreement, fees, and other charges (individually, a **“Tableau Customer Obligation”** and, collectively, the **“Tableau Customer Obligations”**), are entered in this accounting system at, or near, the time such obligations are incurred. Likewise, all payments made by a Tableau Customer with respect to any Tableau Transaction and/or any Tableau Customer Obligation, and all other credits and debits related to any Tableau Customer Obligation or Tableau Transaction, are entered in this accounting system at, or near, the time such payment is received and/or such credit or debit is made or incurred. Each such entry is made in the regular course of business by employees of Salesforce and/or Tableau who process these payments, receipts, credits, and debits. If necessary, Salesforce can print hard copies of all entries.

7. I have personal knowledge of the manner by which Tableau maintains records of its written contracts, statements of work, schedules and any other documents related to such contracts, and all amendments to any contract, statement of work, schedule, and/or any other document (individually, a **“Tableau Agreement”** and, collectively, the **“Tableau Agreements”**) with Tableau Customers. As a regular part of its business, Tableau maintains permanent records of the Tableau Agreements and these records are compiled at the time, or near the time, that such agreements are received or processed.

THE SALESFORCE CONTRACT

8. I personally have reviewed Salesforce’s records relating to the Debtors, including, but not limited to, the Salesforce Transactions, the Salesforce Customer Obligations, the Salesforce Agreements, and the Salesforce Contract (as identified hereinafter), and I am personally familiar with Salesforce’s account(s) with the Debtors.

9. Based on the above-described review of Salesforce’s records, I am informed and

state that the Debtors entered into those certain Order Forms listed on the *Cure Amount Summary*³ (the “**Order Forms**”), which are governed by their applicable *Master Subscription Agreements* (the “**MSAs**” and, together with the Order Forms, collectively the “**Salesforce Contract**”).⁴ Pursuant to the Salesforce Contract: (i) the Debtors ordered certain Salesforce Services and became obligated to pay in full the aggregate amounts due pursuant to this contract with respect to such services; (ii) Salesforce became obligated to provide the Salesforce Services to the Debtors; (iii) Salesforce has provided such services to the Debtors; and (iv) the Debtors accepted and utilized the Salesforce Services provided pursuant to the Salesforce Contract.

THE TABLEAU CONTRACT

10. I personally have reviewed Tableau’s records relating to the Debtors, including the Tableau Transactions, the Tableau Customer Obligations, the Tableau Agreements, and the Tableau Contract (as identified hereinafter),-and I am personally familiar with its account(s) with the Debtors.

11. Based on my review, I am informed and state that the Debtors entered into that certain Order Form listed on the *Cure Amount Summary*⁵ (the “**Order Form**”), which is governed by the applicable End User License Agreement (the “**EULA**” and, together with the Order Form, collectively the “**Tableau Contract**”).⁶ Pursuant to the Tableau Contract: (i) the Debtors ordered certain Tableau Services and became obligated to pay in full the aggregate amounts due pursuant to this contract with respect to such services; (ii) Tableau

³ The Cure Amount Summary is attached hereto as Exhibit A and is incorporated by reference here in as if fully set forth.

⁴ Due to the confidentiality provisions of the MSAs, a copy of the Salesforce Contract and related invoices (the “**Invoices**”) are not attached to my declaration. However, subject to appropriate non-disclosure protections, a copy of the Salesforce Contract and the Invoices will be made available to the Debtors and the Official Committee of Unsecured Creditors (the “**Committee**”) in connection with this Assumption Objection.

⁵ The Cure Amount Summary is attached hereto as Exhibit A and is incorporated by reference here in as if fully set forth.

⁶ Due to the confidentiality provisions of the MSAs, a copy of the Salesforce Contract and related invoices (the “**Invoices**”) are not attached to my declaration. However, subject to appropriate non-disclosure protections, a copy of the Salesforce Contract and the Invoices will be made available to the Debtors and the Official Committee of Unsecured Creditors (the “**Committee**”) in connection with this Assumption Objection.

became obligated to provide the Tableau Services to the Debtors; (iii) Tableau has provided such services to the Debtors; and (iv) the Debtors accepted and utilized the Tableau Services provided pursuant to the Tableau Contract.

BANKRUPTCY CASE

12. Based upon information and belief, I am informed that, on April 23, 2023 (the “**Petition Date**”): (A) Bed, Bath & Beyond, Inc. and the other Debtors each filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code in the United States Bankruptcy Court for the District of New Jersey (the “**Court**”) and, thereby, commenced their individual cases under chapter 11 (collectively, the “**Bankruptcy Cases**”); and (B) on April 24, 2023, the Court entered its order directing the joint administration of the Bankruptcy Cases (but not substantively consolidated consolidating such cases).⁷

13. Based on information and belief, I am informed that, on April 23, 2023, the Debtors filed their motion⁸ (the “**Sale and Assumption Motion**”) seeking entry of an order (the “**Sales Procedures Order**”) approving and authorizing, among other things, (A) certain procedures (the “**Sale Procedures**”) governing the sale (the “**Sale Transaction**”) of substantially all of the Debtors’ assets (the “**Assets**”) to the successful bidder (the “**Successful Bidder**”) at an auction (“**Auction**”), (B) certain procedures governing the assumption and assignment of executory contracts and unexpired leases (the “**Assumption Procedures**”), and (C) authorizing and approving the Sale Transaction and the sale of the Assets to the Successful Bidder and the assumption and assignment of certain contracts (the “**Assumed Contracts**”).

14. Based on information and belief, I am informed that, on April 25, 2023, the

⁷ See Order (A) Directing Joint Administration of Chapter 11 Cases And (B) Granting Related Relief [ECF 75].

⁸ See Debtors’ Motion for Entry of An Order (I)(A) Approving the Auction and Bidding Procedures, (B) Approving Stalking Horse Bid Protections, (C) Scheduling Bid Deadlines and An Auction, (D) Approving the Form and Manner of Notice Thereof, (E) Approving the Form APA, and (II) (A) Establishing Notice And Procedures for The Assumption and Assignment of Contracts and Leases, (B) Authorizing the Assumption and Assignment of Assumed Contracts, (C) Authorizing the Sale of Assets And (D) Granting Related Relief [ECF 29]

Court entered its order (the “**Sale Procedures Order**”)⁹ approving among other things: the Sale Procedures and the Assumption Procedures.

15. Based on information and belief, I am informed that, pursuant to the Sale Procedures Order, on or about June 13, 2023, the Debtors served their *Notice to Contract Parties to Potentially Assumed Executory Contracts or Unexpired Leases* [ECF 714] (the “**Cure Notice**”) on Salesforce. As set forth below, the Cure Notice identifies (A) the following executory contracts that potentially may be assumed and assigned in connection with the Sale Transaction and (B) the monetary default amounts that must be cured with respect to each such contract:

#	Debtor	Counterparty	Contract Description	Cure Amount
1677	Bed Bath & Beyond Inc.	Salesforce.com, Inc.	(4-606198 Salesforce Service Cloud Renewal for 2022	\$ -
1678	Bed Bath & Beyond Inc.	Salesforce.com, Inc.	(4-606198 Q-04549814 - salesforce - Fully executed	\$ -
1679	Bed Bath & Beyond Inc.	Salesforce.com, Inc.	(4-606198 Salesforce - Master Subscription Agreement - fully executed	\$ 4,592,474.11
1835	Bed Bath & Beyond Inc.	Tableau Software	Tableau Subscription Renewal	\$ -

16. Based on information and belief, I am informed that, the Cure Notice, further, states that the deadline for filing objections to proposed assumption and assignment of the above-identified executory contracts and the Debtors’ Proposed Cure Amount is June 26, 2023, at 5:00 p.m. (prevailing Eastern time) (the “**Cure Objection Deadline**”), and any such objection must be received on or before on the Cure Objection Deadline by all parties in interest identified in the Cure Notice.

THE CURE AMOUNT

17. Based upon my review of Salesforce’s books and records that are pertinent to the Debtors’ account, I declare and state that: (A) the executory contracts identified on the *Cure Notice* as executory contracts that potentially may be assumed and assigned in connection with the Sale Transaction is incomplete (because it fails to include all Order Forms to which

⁹ See, *Order (I) Approving the Auction and Bidding Procedures, (II) Approving Stalking Horse Bid Protections, (III) Scheduling Bid Deadlines and An Auction, (IV) Approving the Form and Manner of Notice Thereof, and (V) Granting Related Relief* [ECF 92] (the “**Sale Procedures Order**”).

Salesforce and the Debtors are the counterparties that, together, constitute the integrated Salesforce Contract governing the Salesforce Services) or the monetary default (*i.e.*, the Cure Costs) that must be cured as a condition of the assumption of the Salesforce Contract as listed on Salesforce's records;¹⁰ (B) the Salesforce Contract (including all Order Forms) that, together govern the Salesforce Services is correctly identified on Exhibit "A", the Cure Amount Summary, attached to this declaration; and (C) as of the date of this declaration, Salesforce's records show that the monetary default due and owing pursuant to the Salesforce Contract in an amount not less than **\$4,892,474.12** (the "**Salesforce Contract Cure Amount**").

18. Based upon my review of Tableau's books and records that are pertinent to the Debtors' account, I declare and state that: (A) the executory contract identified as the Tableau Contract on the *Cure Notice* does not match the description of the executory contracts to which Tableau and the Debtors are counterparties as listed on Salesforce's records;¹¹ (B) the Tableau Contract is correctly identified on Exhibit "A", the Cure Amount Summary, attached to this declaration; and (C) as of the date of this declaration, Salesforce's records show that the Debtors have paid all fees due pursuant to the Tableau Contract and, accordingly, the balance owed is \$0.00 (the "**Tableau Contract Cure Amount**").

19. Because the Cure Notice does not correctly identify all the Potentially Assumable Contracts to which Salesforce and/or Tableau is a counterparty, it is possible that the Salesforce Contract Cure Amount and/or the Tableau Contract Cure Amount may be increased once all executory contracts to be assumed are determined by Salesforce and the Debtors.¹²

¹⁰ Accordingly, the Salesforce Assumption And Assignment Objection requests the Debtors provide further information concerning the executory contract they propose may be assumed pursuant to the Plan.

¹¹ Accordingly, the Salesforce Assumption And Assignment Objection requests the Debtors provide further information concerning the executory contract they propose may be assumed pursuant to the Plan.

¹² By the Salesforce Assumption And Assignment Objection, Salesforce reserves all rights with respect to each executory contract not identified in the Cure Notice but that, ultimately, the Debtors seek to assume and/or assign pursuant to the Sale and Assumption Motion, any other motion, or any plan of reorganization.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 6/20/2023 day of June 2023 at San Francisco, California

DocuSigned by:

Kevin Ramirez

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Kevin Ramirez

Petition Date: 4/23/23

Contract No.	Agreement	Order No.	Order Date	Term	Invoice No.	Invoice Date	Due Date	Service Period	Balance	Pre-petition	Post-petition Accrued	Unbilled Contract Balance
02711714	MSA 2/3/21	Q-112692	2-Feb-21	5-Feb-21 to 4-Feb-24	25019929	4-Feb-23	21-Mar-23	5-Feb-23 to 4-Feb-24	\$ 1,305,648.17	\$ 275,438.11	\$ 1,030,210.06	
02801145	standard clickthrough although amended January 29, 2021	Q-05059801 Q-05416918 Q-05689993 Q-05774370	28-Oct-21 5-Apr-22 5-May-22 28-Jul-22	15-Nov-21 to 14-Nov-24 4-Apr-22 to 14-Nov-24 28-Apr-22 to 14-Nov-24 14-Jul-22 to 14-Nov-24	23937114	16-Oct-22	30-Nov-22	15-Nov-22 to 14-May-23	\$ 300,000.01	\$ 34,306.52	\$ 265,693.49	
02801145	same as above	Same as above	Same as above	Same as above	25681405	15-Apr-23	30-May-23	15-May-23 to 14-Nov-23	\$ 2,185,932.82		\$ 2,185,932.82	
02801145	same as above	Same as above	Same as above	Same as above	TBD			15-Nov-23 to 14-May-24	\$ 2,185,932.82			\$ 2,185,932.82
02801145	same as above	Same as above	Same as above	Same as above	TBD			15-May-24 to 14-Nov-24	\$ 2,185,932.82			\$ 2,185,932.82
02682981	May 15, 2021 Online MSA	Q-06167792 Q-04549814 Q-05840332	16-Nov-22 30-Apr-21 30-Jun-22	16-Nov-22 to 14-May-24 16-May-21 to 14-May-24 1-Jul-22 to 14-May-24	25680925	15-Apr-23	30-May-23	13-May-23 to 14-May-23	\$ 1,099,593.12		\$ 1,099,593.12	
03405984	May 15, 2021 Online MSA	23989420	10-Mar-23	8-Mar-23 to 7-Mar-24	25342047	10-Mar-23	9-Apr-23	3/8/2023	\$ 1,300.00	\$ 1,300.00		
									<u>\$ 9,264,339.76</u>	<u>\$ 311,044.63</u>	<u>\$ 4,581,429.49</u>	<u>\$ 4,371,865.64</u>

Current Salesforce Cure Amount \$ 4,892,474.12

Contract No.	Agreement	Order No.	Order Date	Term	Invoice No.	Invoice Date	Due Date	Service Period	Balance	Pre-petition	Post-petition Accrued	Unbilled Contract Balance
Tableau	EULA	5193159	31-Oct-21	7-Oct-21 to 6-Oct-23	Contract has been paid through the end of the current term				\$ -	\$ -	\$ -	\$ -

Current Tableau Cure Amount \$ -